

March 10, 2020

Via Federal eRulemaking Portal

Council on Environmental Quality
730 Jackson Place NW
Washington, D.C. 20503

Re: Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act; 85 Fed. Reg. 1,684 (Jan. 10, 2020); Dkt. No. CEQ-2019-0003-0001; RIN 0331-AA03

Dear Chairman Neumayr:

On behalf of the 59 undersigned organizations and our millions of members and supporters, who are committed to protecting and restoring the oceans, we write to urge the Council on Environmental Quality (CEQ) to act responsibly and wisely in its interpretation of the National Environmental Policy Act (NEPA) and withdraw the Notice of Proposed Rulemaking (“proposed rule”).

The United States is an ocean nation with over 13,000 miles of coastlines and over 4.4 million square miles of ocean under its jurisdiction – an area larger than the combined land area of the 50 states.ⁱ The NEPA review process is critically important for federal actions affecting our nation’s oceans, including decisions related to recreational and commercial fishing, offshore oil and gas exploration and development, offshore wind development, the designation of protected areas, and the protection of ocean wildlife, including marine mammals. The appendix to this letter includes some examples of how NEPA has made a positive impact on federal decision-making with regards to the oceans.

CEQ’s proposed rule would eviscerate environmental protections by removing NEPA review and public oversight from numerous federal actions that are currently covered and by making reviews that are still required less comprehensive. The proposed rule makes changes that will limit transparency and the public’s ability to be adequately involved in the government’s decision-making processes. The proposed rule is not an attempt at “modernization,” as the administration claims.ⁱⁱ Rather, it is aimed at undercutting the intent of NEPA, a law passed on an overwhelmingly bipartisan basis, and its implementing regulations, which have allowed for public input and access to the federal government’s reasoning in making its decisions for over 50 years.

NEPA requires the federal government to engage in a review process designed to identify and publicly disclose any significant environmental, social, economic, or public health impacts a federal action may have, well before any final decision is made.ⁱⁱⁱ Federal actions include not only actions implemented directly by federal government agencies but also authorizations and permits issued by the federal government for private activities subject to federal regulation, such as offshore drilling. The proposed rule would gut NEPA by:

- Creating new exemptions that would reduce the number and types of federal actions that would receive environmental review and public input.^{iv}
- Excluding consideration of “cumulative impacts” of a federal project or action.^v This change would effectively silo decision-making on each project by excluding consideration of the impacts of past, present, or future federal projects or actions in the same area. Climate change impacts could be entirely ignored, and consideration of “indirect effects” of federal

actions, such as the depletion of food supplies and destruction of habitat resulting from an oil spill, would be optional.^{vi}

- Limiting the range of alternatives that must be considered in the NEPA analysis.^{vii} Without full consideration of a reasonable range of project alternatives—including a no-action alternative—necessary changes to a project or action, which have proven time and again to reduce environmental impacts while saving taxpayer money, are less likely to occur.^{viii}
- Creating conflicts of interest by allowing private corporations to prepare their own environmental impact statements.^{ix} For example, an oil company could potentially be allowed to prepare an environmental impact statement for its proposed offshore oil drilling project.
- Establishing hard deadlines and page limits for environmental reviews, regardless of the project size, complexity, or controversy, thereby discouraging rigorous factual, scientific, and/or economic analysis and restricting the depth of analysis during the NEPA review process.^x
- Limiting the public's ability to have its voice heard by requiring public comments to be more specific and technical in nature and making it harder for the public to comment on federal actions that may adversely affect our environment, communities, livelihood, and well-being.^{xi}

By giving the public a voice and requiring federal actions to undergo thorough environmental review, NEPA has resulted in better decision-making by the federal government. As the examples listed below demonstrate, NEPA review leads to federal actions that better protect our oceans and the wildlife that inhabit them. CEQ's proposed rule would significantly limit the public's ability to participate in environmental decisions, severely restrict the depth of analysis for NEPA review, and sharply reduce protections for our oceans. For all these reasons, we urge you to withdraw the proposed rule.

Sincerely,

Oceana
Advisory Council on Underwater Archaeology
Alaska Wilderness League
Alaska's Big Village Network
Altamaha Coastkeeper
Animal Welfare Institute
Assateague Coastal Trust
Azul
Blue Frontier
Center for a Sustainable Coast
Center for Biological Diversity
Center for Food Safety
Center for the Blue Economy, Middlebury Inst. of Intl. Studies
Cetacean Society International
Clean Ocean Action
Coastal Carolina Riverwatch
Community Advocate OHC

Crystal Coast Waterkeeper
Dogwood Alliance
Earthjustice
Endangered Species Coalition
Environmental Investigation Agency
Friends of the Earth
Friends of the Mariana Trench
Gotham Whale
Greenpeace USA
Hands Across the Sand
Healthy Gulf (formerly Gulf Restoration Network)
Heirs To Our Oceans
Inland Ocean Coalition
International Fund for Animal Welfare
International Marine Mammal Project of Earth Island Institute
League of Conservation Voters
Love Wild Horses
Lynnhaven River NOW
Marine Conservation Institute
Marine Education, Research & Rehabilitation Institute
Marine Mammal Alliance Nantucket
Mission Blue
National Aquarium
National Audubon Society
NC League of Conservation Voters
NY4WHALES
Ocean Conservation Research
Ocean Sounds
OceanCare
Oceanic Preservation Society
Ogeechee Riverkeeper
Pacific Environment
Sanctuary Education Advisory Specialists SEAS LLC
Save Our Shores
Save the Manatee Club
Seven Circles Foundation
Sierra Club of Coastal Empire
Surfrider Foundation
The Ocean Project
Virginia Conservation Network
Whale and Dolphin Conservation
White Oak-New Riverkeeper Alliance

APPENDIX
EXAMPLES OF NEPA'S IMPORTANCE IN THE OCEAN CONTEXT
UNDER CURRENT NEPA REGULATIONS

- In 2009, the Army Corps of Engineers, with the assistance of several state agencies issued a 1500-page draft EIS considering the impacts of introducing non-native Chinese oysters.^{xii} The non-native species seemed like a promising means to revive the Chesapeake Bay devastated oyster crop. More than 2,000 comments were submitted, with scientists, federal agencies, and other coastal states raising red flags about the potential irreversible dangers of introducing the Chinese oysters, including harm to the remaining native stock and possible threats to human health. After considering the comments, the Army Corps of Engineers found that the Chinese oysters posed a “potential for significant negative ecological consequences.”^{xiii} Instead, the Army Corps of Engineers chose an alternative that only involved the propagation of the native Eastern oyster.^{xiv} An April 2013 study by the Maryland Department of Natural Resources showed population and reproduction increased for two years in a row for native oyster species.^{xv}
- In 2016, the NEPA review process was crucial in a review and modification of Essential Fish Habitat management measures in New England where an environmental impact statement (EIS) showed that high value Essential Fish Habitat for overfished Georges Bank Atlantic cod still required conservation and could not be re-opened for the scallop fishery.^{xvi} This Essential Fish Habitat remains protected because of NEPA.
- In 2016, the Fisheries Service published a Draft EIS and proposed rule to require all vessels using skimmer trawls to use turtle excluder devices (TED).^{xvii} Many of the undersigned organizations commented to express their support for the rule because it would benefit the environment, tourism, the commercial shrimp industry, and commercial and recreational fishing enterprises targeting other species.^{xviii} Although the final TED Rule only requires TEDs on some skimmer trawls, the Final EIS evaluated alternatives ranging from no action to requiring TEDs on all vessels using skimmer trawls.^{xix} Going forward, the undersigned organizations will be able to advocate for necessary protections for endangered and threatened sea turtles using the agency’s analysis provided during the NEPA review process.
- In a recent deep-sea coral management action in the Gulf of Mexico, more than 11,000 public comments were submitted during the NEPA process from scoping through the proposed rulemaking.^{xx} The NEPA process made the final agency action stronger by allowing stakeholders, like the signatories to this letter, to engage and suggest alternatives and the Fishery Management Council to assess the effects of those alternatives.^{xxi}
- On October 18, 2016, the Fisheries Service proposed an amendment to the Atlantic Highly Migratory Species Fishery Management Plan after determining that the dusky shark is overfished and issued a Draft EIS.^{xxii} Later that year, Oceana submitted a comment letter recommending that the Fisheries Service significantly revise the proposed amendment and the Draft EIS in order to analyze a reasonable range of alternative measures that would effectively count, cap, and control bycatch and mortality for dusky sharks.^{xxiii} Oceana eventually challenged the Final EIS and final rule implementing the amendment based on a failure to comply with NEPA and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).^{xxiv} On March 11, 2019, the District Court for the District of Columbia found that the Fisheries Service had not complied with the Magnuson-

Stevens Act but did not reach the issue of whether the Fisheries Service met its obligations under NEPA, finding that the arguments made under the Magnuson-Stevens Act did not “differ materially” from the arguments made under NEPA.^{xxv} This litigation is still pending.

- In *American Oceans Campaign v. Daley*, the predecessor organization to Oceana, American Oceans Campaign (AOC), challenged the Fisheries Service’s promulgation of Essential Fish Habitat regulations and the subsequent amendments to Essential Fish Habitat proposed by five out of the eight Regional Fishery Management Councils.^{xxvi} AOC argued, in part, that the Fisheries Service and the Regional Fishery Management Councils violated NEPA by limiting review to an environmental assessment and finding of no significant impact for each amendment proposed by the Fishery Management Councils, instead of performing a full EIS.^{xxvii} The court found for AOC and ordered the Fisheries Service to perform a new and more thorough environmental assessment or an EIS for each amendment proposed by the Fishery Management Councils.^{xxviii} The Fishery Management Councils then conducted full EISs that thoroughly analyzed impacts and considered a range of alternatives, including proposals submitted by Oceana (no longer AOC at this point).^{xxix} The Pacific and North Pacific Fishery Management Councils adopted modified versions of Oceana’s alternatives, implementing sweeping victories to protect deep sea corals and sea floor habitats.^{xxx} The Fisheries Service also agreed to prepare a separate Essential Fish Habitat Amendment for the Atlantic Herring Fishery Management Plan, leading to a 2005 Final EIS analyzing the adverse effects of the fishery on Essential Fish Habitat, including a range of alternatives to address those effects.^{xxxi} The 2005 Final EIS ultimately led the Fisheries Service to the conclusion that the adverse effects of mobile bottom-tending gear required mitigation.^{xxxii}
- In recent years, the NEPA review process to permit offshore energy activities in the Atlantic has provided an opportunity for a wide range of stakeholders from non-governmental organizations, like the undersigned, to fishermen and fisheries managers to give feedback about the proposed activities to ensure that any new activity is consistent with the competing interests of the affected region. These activities have included seismic airgun surveying,^{xxxiii} oil and gas leasing,^{xxxiv} and offshore wind.^{xxxv}
- Legal precedent requires a NEPA analysis of indirect effects that may result from the approval of a pipeline, meaning, information about the upstream production and downstream consumption effects of gas transmission.^{xxxvi} The Federal Energy Regulatory Commission (FERC) has authority to deny pipeline certifications based on environmental factors, so this information is essential to FERC’s decision-making. Under current regulations, an examination of indirect effects and cumulative effects would be required to include an analysis of the effect of climate change that will result from the gas to be transmitted and burned. The current regulations would also require an analysis of the impacts that climate change might have on the integrity of the pipeline. FERC’s authority extends to regulation of offshore pipelines, as well, and active pipelines currently send oil across thousands of miles of ocean. Weakening the safeguards that regulate these pipelines poses a direct threat to the oceans they traverse, as well as an indirect threat due to climate change.
- The importance of effective NEPA analysis to inform agency decisions is further detailed in a 2006 Report of the Western Pacific Fisheries Management Council.^{xxxviii} The report emphasizes the importance of taking into account social and economic effects of proposed alternatives, as well as a full range of action alternatives.
- NEPA analysis helped stop the expansion and dredging of ports in Florida. The Army Corps of Engineers (Corps) carried out a port expansion project in Miami that killed over an

estimated 560,000 corals, including threatened species like Staghorn and Elkhorn coral, and permanently destroyed over 200 acres of coral reef.^{xxxix} Shortly after finishing in Miami, the Corps proposed a similar project in Ft. Lauderdale. The NEPA analysis showed that the Corps planned to use the same methods they used in Miami.^{xi} The Corps did not plan to adopt any mitigation measures to prevent the same damage that happened in Miami from repeating in Ft. Lauderdale. The Corps agreed to settle shortly after the complaint was filed and is now in the process of redoing its environmental analysis to account for lessons learned in Miami.^{xli} The NEPA process allows the public to hold the Corps accountable and make changes based on past mistakes.

- Current NEPA regulations and analyses are also critical for coral reef conservation, including in the following contexts:
 - The U.S. Coral Reef Task Force^{xlii}
 - The EPA Handbook on Coral Reef Impacts (2016)^{xliii}
 - The Department of Defense Coral Reef Implementation Plan (2000)^{xliiv}
 - NOAA's Coral Reef Conservation Program (CRCP) throughout parts of the United States, including the South Atlantic Ocean, Gulf of Mexico, and Remote Pacific Islands, and priority international areas (i.e., wider Caribbean, Coral Triangle, South Pacific, and Micronesia).^{xliv}
- Several rulings related to NEPA have been made regarding North Atlantic Right Whales. They include the Final Rule to eliminate sunset provision on speed restrictions (12/09/13, 78 FR 73726), Proposed rule to eliminate sunset provision on speed restrictions (06/06/2013, 78 FR 34024), Economic Analysis of North Atlantic Right Whale Ship Strike Reduction Rule (2012, PDF 49 pages), and the Final Rule to implement speed restrictions (10/10/2008, 73 FR 60173).

ⁱ Map of the U.S. Exclusive Economic Zone, NOAA, https://www.gc.noaa.gov/documents/2011/012711_gcil_maritime_eez_map.pdf (last visited Feb. 25, 2020). The land area of the 50 states and the District of Columbia is approximately 3.8 million square miles. See *Land and Water Area of States and Other Entities*, U.S. CENSUS BUREAU (2011) <ftp://ftp.census.gov/library/publications/2010/compendia/statab/130ed/tables/11s0355.pdf>.

ⁱⁱ Update the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act, 85 Fed. Reg. 1684, 1684 (Jan. 10, 2020).

ⁱⁱⁱ 42 U.S.C. § 4332 (2018).

^{iv} See 85 Fed. Reg. at 1728 (modifying the definition of categorical exclusion).

^v See *id.* at 1729 (stating that analysis of cumulative effects is not required).

^{vi} See *id.* at 1728–29 (removing the definition of indirect effects and stating that effects are not significant if they are “remote in time, geographically remote, or the product of a lengthy causal chain.”); OUTER CONTINENTAL SHELF OIL AND GAS LEASING PROGRAM: 2017-2022 FINAL PROGRAMMATIC ENVIRONMENTAL IMPACT STATEMENT VOL. I, BOEM (Nov. 2016), available at https://www.boem.gov/sites/default/files/oil-and-gas-energy-program/Leasing/Five-Year-Program/2012-2017/BOEMOceanInfo/fpeis_volumeI.pdf.

^{vii} See 85 Fed. Reg. at 1720 (changing the standard for evaluating alternatives and stating that agencies do not need to evaluate alternatives not within their jurisdiction).

^{viii} For example, see endnote 2.

^{ix} See *id.* at 1720 (inserting provisions that allow applicants and contractors to prepare an EIS for their own project).

^x See *id.* at 1719 (requiring a final EIS to be less than 150 pages or 300 pages for an EIS of “unusual scope or complexity”).

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- ^{xi} See *id.* at 1713 (inserting additional language stating that comments must be “as specific as possible”).
- ^{xii} DRAFT PROGRAMMATIC ENVIRONMENTAL IMPACT STATEMENT FOR OYSTER RESTORATION IN CHESAPEAKE BAY INCLUDING THE USE OF A NATIVE AND/OR NONNATIVE OYSTER, ARMY CORPS OF ENGINEERS (2008), available at <https://dnr.maryland.gov/fisheries/Pages/eis.aspx>.
- ^{xiii} RECORD OF DECISION: FINAL PROGRAMMATIC ENVIRONMENTAL IMPACT STATEMENT FOR OYSTER RESTORATION IN CHESAPEAKE BAY INCLUDING THE USE OF A NATIVE AND/OR NONNATIVE OYSTER, ARMY CORPS OF ENGINEERS (Aug. 13, 2009), available at <https://www.nao.usace.army.mil/Portals/31/docs/civilworks/oysters/oysterdecision.pdf>. See also FINAL PROGRAMMATIC ENVIRONMENTAL IMPACT STATEMENT FOR OYSTER RESTORATION IN CHESAPEAKE BAY INCLUDING THE USE OF A NATIVE AND/OR NONNATIVE OYSTER, U.S. ARMY CORPS OF ENGINEERS (2009).
- ^{xiv} *Id.*
- ^{xv} *MD Oyster Population, Reproduction Up for 2nd Year*, CBS DC (April 10, 2013), <https://washington.cbslocal.com/2013/04/10/md-oyster-population-reproduction-up-for-2nd-year/>.
- ^{xvi} See OMNIBUS ESSENTIAL FISH HABITAT AMENDMENT 2 FINAL ENVIRONMENTAL IMPACT STATEMENT, NEW ENGLAND FISHERY MANAGEMENT COUNCIL 24–79 (Updated Dec. 8, 2016), available at <https://www.nefmc.org/library/omnibus-habitat-amendment-2> (this link contains links to the six volumes and appendices that make up the Final EIS for the Essential Fish Habitat rule); OMNIBUS ESSENTIAL FISH HABITAT AMENDMENT 2 DRAFT ENVIRONMENTAL IMPACT STATEMENT VOL. 1, NEW ENGLAND FISHERY MANAGEMENT COUNCIL (Updated Oct. 1, 2014), available at <http://s3.amazonaws.com/nefmc.org/14haboa2eisvol1summaryaffectedenvironment.pdf>.
- ^{xvii} Sea Turtle Conservation; Shrimp Trawling Requirements, 81 Fed. Reg. 91,097 (proposed Dec. 16, 2016); DRAFT ENVIRONMENTAL IMPACT STATEMENT TO REDUCE THE INCIDENTAL BYCATCH AND MORTALITY OF SEA TURTLES IN THE SOUTHEASTERN U.S. SHRIMP FISHERIES, NATIONAL MARINE FISHERIES SERVICE (Nov. 29, 2016), available at <https://www.regulations.gov/document?D=NOAA-NMFS-2016-0151-0002>.
- ^{xviii} Letter from 83 environmental organizations to Michael Barnette, Southeast Regional Office, Protected Resources Division, National Marine Fisheries Service (Feb. 14, 2017) (text of letter available at <https://mission-blue.org/2017/02/83-ngos-unite-to-save-sea-turtles-from-shrimp-trawls/>).
- ^{xix} Sea Turtle Conservation; Shrimp Trawling Requirements, 84 Fed. Reg. 70,048 (Dec. 20, 2019); FINAL ENVIRONMENTAL IMPACT STATEMENT TO REDUCE THE INCIDENTAL BYCATCH AND MORTALITY OF SEA TURTLES IN THE SOUTHEASTERN U.S. SHRIMP FISHERIES, NATIONAL MARINE FISHERIES SERVICE 21–25 (Nov. 4, 2019), available at <https://www.fisheries.noaa.gov/webdam/download/99187727>.
- ^{xx} See Amendment 9 Coral Habitat Areas Considered for Management in the Gulf of Mexico, REGULATIONS.GOV, <https://www.regulations.gov/docket?D=NOAA-NMFS-2017-0146> (last visited Jan. 24, 2020).
- ^{xxi} See Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic: Atlantic Highly Migratory Species; Coral and Coral Reefs of the Gulf of Mexico; Amendment 9, 84 Fed. Reg. 62,491 (Nov. 15, 2019); CORAL HABITAT AREAS CONSIDERED FOR HABITAT AREA OF PARTICULAR CONCERN DESIGNATION IN THE GULF OF MEXICO: FINAL ENVIRONMENTAL IMPACT ASSESSMENT, GULF OF MEXICO FISHERY MANAGEMENT COUNCIL (Nov. 2018), available at <https://www.regulations.gov/document?D=NOAA-NMFS-2017-0146-0035>; CORAL HABITAT AREAS CONSIDERED FOR HABITAT AREA OF PARTICULAR CONCERN DESIGNATION IN THE GULF OF MEXICO: DRAFT ENVIRONMENTAL IMPACT ASSESSMENT, GULF OF MEXICO FISHERY MANAGEMENT COUNCIL (May 2018), available at <https://www.regulations.gov/document?D=NOAA-NMFS-2017-0146-0011>.
- ^{xxii} Atlantic Highly Migratory Species; Atlantic Shark Management Measures; Proposed Amendment 5b, 81 Fed. Reg. 71,672 (Oct. 18, 2016); AMENDMENT 5B TO THE 2006 CONSOLIDATED ATLANTIC HIGHLY MIGRATORY SPECIES FISHERY MANAGEMENT PLAN: DRAFT ENVIRONMENTAL IMPACT STATEMENT, NATIONAL MARINE FISHERIES SERVICE (Oct. 2016), available at <https://www.fisheries.noaa.gov/webdam/download/64518544>.
- ^{xxiii} Letter from Lora Snyder, Oceana, to Margo Schulze-Haugen, National Marine Fisheries Service (Dec. 22, 2016).
- ^{xxiv} *Oceana, Inc. v. Ross*, 363 F. Supp. 3d 67, 75 (D.D.C. 2019); see also AMENDMENT 5B TO THE 2006 CONSOLIDATED ATLANTIC HIGHLY MIGRATORY SPECIES FISHERY MANAGEMENT PLAN: FINAL ENVIRONMENTAL IMPACT STATEMENT, NATIONAL MARINE FISHERIES SERVICE (Feb. 2017), available at <https://www.fisheries.noaa.gov/webdam/download/64522083>.
- ^{xxv} *Oceana, Inc. v. Ross*, 363 F. Supp. 3d 67, 94 (D.D.C. 2019).
- ^{xxvi} The five regional fishery management councils that proposed amendments were the Gulf of Mexico Fishery Management Council, New England Fishery Management Council, Caribbean Fishery Management Council, Pacific Fishery Management Council, and North Pacific Fishery Management Council. *American Oceans Campaign v. Daley*, 183 F. Supp. 2d 1, 5 (D.D.C. 2000).
- ^{xxvii} *Id.* at 9
- ^{xxviii} *Id.* at 21.

^{xxix} See, e.g., RECORD OF DECISION: FINAL ENVIRONMENTAL IMPACT STATEMENT FOR ESSENTIAL FISH HABITAT IDENTIFICATION AND CONSERVATION IN ALASKA, NATIONAL MARINE FISHERIES SERVICE (Aug. 8, 2005).

^{xxx} See, e.g., *Id.* at 5–6 (finding that the preferred alternative was to expand closures in the Aleutian Islands and Gulf of Alaska).

^{xxxi} NATIONAL MARINE FISHERIES SERVICE, FINAL ENVIRONMENTAL IMPACT STATEMENT FOR MINIMIZING IMPACTS OF THE ATLANTIC HERRING FISHERY ON ESSENTIAL FISH HABITAT 3 (Jan. 7, 2005), available at <https://books.google.com/books?id=z83AQAAAJ&lpg=PA3&ots=gwS9g7akuD&dq=Atlantic%20Herring%20FMP%20EFH%20FEIS&pg=PP1#v=onepage&q&f=false>.

^{xxxii} *Id.* This EIS included the first descriptions of regional fishing gears and habitats, and summaries of the existing knowledge on the effects of fishing gears on habitats for the 37 species managed by the New England and Mid-Atlantic Fishery Management Councils. *Id.*

^{xxxiii} For the seismic airgun survey program, NEPA review was conducted at the programmatic level and for the Incidental Harassment Authorization permits. ATLANTIC OCS PROPOSED GEOLOGICAL AND GEOPHYSICAL ACTIVITIES: MID-ATLANTIC AND SOUTH ATLANTIC PLANNING AREAS FINAL PROGRAMMATIC ENVIRONMENTAL IMPACT STATEMENT, BOEM (Feb. 2014), available at <https://www.boem.gov/oil-gas-energy/atlantic-geological-and-geophysical-gg-activities-programmatic-environmental-impact> (this link contains links to three volumes of the Final EIS); ATLANTIC OCS PROPOSED GEOLOGICAL AND GEOPHYSICAL ACTIVITIES: MID-ATLANTIC AND SOUTH ATLANTIC PLANNING AREAS DRAFT PROGRAMMATIC ENVIRONMENTAL IMPACT STATEMENT, BOEM (Feb. 2014), available at <https://www.boem.gov/oil-gas-energy/atlantic-geological-and-geophysical-gg-activities-programmatic-environmental-impact> (this link contains links to two volumes of the Draft EIS); ENVIRONMENTAL ASSESSMENT: ISSUANCE OF FIVE INCIDENTAL HARASSMENT AUTHORIZATIONS TO TAKE MARINE MAMMALS INCIDENTAL TO GEOPHYSICAL SURVEYS IN THE ATLANTIC OCEAN, NATIONAL MARINE FISHERIES SERVICE (Nov. 2018), available at <https://www.fisheries.noaa.gov/webdam/download/84146657>; FINDING OF NO SIGNIFICANT IMPACT FOR ISSUANCE OF INCIDENTAL HARASSMENT AUTHORIZATIONS TO TAKE MARINE MAMMALS BY HARASSMENT INCIDENTAL TO GEOPHYSICAL SURVEYS IN THE ATLANTIC OCEAN, NATIONAL MARINE FISHERIES SERVICE (Nov. 2018), available at <https://www.fisheries.noaa.gov/webdam/download/84146675>.

^{xxxiv} OUTER CONTINENTAL SHELF OIL AND GAS LEASING PROGRAM: 2017-2022 FINAL PROGRAMMATIC ENVIRONMENTAL IMPACT STATEMENT, BOEM (Nov. 2016), available at <https://www.boem.gov/oil-gas-energy/leasing/2017-2022-ocs-oil-and-gas-leasing-program> (this link contains links for Volumes I and II of the Final Programmatic EIS); OUTER CONTINENTAL SHELF OIL AND GAS LEASING PROGRAM: 2017-2022 DRAFT PROGRAMMATIC ENVIRONMENTAL IMPACT STATEMENT, BOEM (Nov. 2016), available at <https://www.boem.gov/oil-gas-energy/leasing/2017-2022-ocs-oil-and-gas-leasing-program> (this link contains links for Volumes I and II of the Draft Programmatic EIS).

^{xxxv} See, e.g., *Letter from Massachusetts Lobstermen’s Association to BOEM Regarding the Vineyard Wind, LLC: Proposed Wind Energy Facility Offshore Massachusetts*, REGULATIONS.GOV (April 18, 2018), available at <https://www.regulations.gov/contentStreamer?documentId=BOEM-2018-0015-0022&attachmentNumber=1&contentType=pdf> (commenting on the Vineyard Wind Energy Project Draft Environmental Impact Statement, VINEYARD WIND OFFSHORE WIND ENERGY PROJECT DRAFT ENVIRONMENTAL IMPACT STATEMENT, BUREAU OF OCEAN ENERGY MANAGEMENT (Dec. 2018), available at https://www.boem.gov/sites/default/files/renewable-energy-program/State-Activities/MA/Vineyard-Wind/Vineyard_Wind_Draft_EIS.pdf).

^{xxxvi} *Birckhead v. FERC*, 925 F.3d 510 (D.C. Cir. 2019).

^{xxxvii} *Sierra Club v. FERC*, 867 F.3d 1357, 1371 (D.C. Cir. 2017).

^{xxxviii} HAWAII: A CENTER FOR PACIFIC SEA TURTLE RESEARCH & CONSERVATION, WESTERN PACIFIC REGIONAL FISHERY COUNCIL 42 (2006), available at http://www.wpcouncil.org/wp-content/uploads/2013/03/Turtle-Excellence_FINAL.pdf.

^{xxxix} See, Ross Cunning et. al, *Extensive coral mortality and critical habitat loss following dredging and their association with remotely-sensed sediment plumes*, MARINE POLLUTION BULLETIN 145 (Aug. 2019).

^{xl} FINAL ENVIRONMENTAL IMPACT STATEMENT: PORT EVERGLADES HARBOR NAVIGATION STUDY, U.S. ARMY CORPS OF ENGINEERS (revised May 2015). See also *Complaint, Miami Waterkeeper v. United States Army Corps of Engineers*, 2016 WL 4402059 (S.D. Fla. 2016) (No. 16-cv-61975).

^{xli} See Joint Stip. Req. to Stay Proceedings, *Miami Waterkeeper*, 2016 WL 4402059 (S.D. Fla. 2016) (No. 16-cv-61975).

^{xlii} See *Working to preserve and protect coral reef ecosystems*, UNITED STATES CORAL REEF TASK FORCE <https://www.coralreef.gov/>; see also A NATIONAL CORAL REEF ACTION STRATEGY: REPORT TO CONGRESS, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION (June 2002), available at https://www.coris.noaa.gov/activities/actionstrategy/action_reef_final.pdf.

^{xliii} HANDBOOK ON CORAL REEF IMPACTS: AVOIDANCE, MINIMIZATION, COMPENSATORY MITIGATION, AND RESTORATION, U.S. CORAL REEF TASK FORCE (Dec. 2016), available at <https://www.epa.gov/sites/production/files/2018-01/documents/uscrf-handbook-on-coral-reef-impacts.pdf>.

^{xliiv} CORAL REEF PROTECTION IMPLEMENTATION PLAN, DEPARTMENT OF DEFENSE (Nov. 2000), available at <https://www.denix.osd.mil/nr/otherconservationtopics/coastalandoceanresources/coral-reefs/coral-reef-implementation-plan>.

^{xlv} CORAL REEF CONSERVATION PROGRAM: DRAFT ENVIRONMENTAL IMPACT STATEMENT, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION (Dec. 2019), available at <https://www.regulations.gov/document?D=NOAA-NOS-2019-0127-0001>.